

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRED L. EDWARDS

V.

C.A. NO. 05-373

MERCK & CO., INC.

MEMORANDUM OPINION AND ORDER

RUFE, J.

APRIL 18, 2006

This case represents a classic illustration of an employee not taking responsibility for his own imprudent actions and instead blaming the consequences on everyone but himself. Plaintiff brought this action under Title VII of the Civil Rights Act of 1964, claiming the Defendant 's decision to terminate his employment was in retaliation for Plaintiff previously filing a charge of race discrimination with the Equal Employment Opportunity Commission ("EEOC").¹ Presently before the Court is the

1. Plaintiff has withdrawn his claim under the Pennsylvania Human Relations Act.

Defendant's motion for summary judgment. For the reasons which follow, the motion is granted.

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, "the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment a matter of law."² "Summary judgment will not lie if the dispute about a material fact is 'genuine', that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."³

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party.⁴ The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts,"⁵ and must produce more than a "mere

2. Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (citing Armbruster v. Unisys Corp., 32 F.3d 786, 777 (3d Cir. 1994)).

3. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

4. Matsushita Elec.Indus.Co. v. Zenith Radio Corp., 474 U.S. 574, 587 (1986) (quoting United States v. Diehold, Inc., 369 U.S. 654, 655 (1962)).

5. Matsushita, 475 U.S. at 586.

scintilla" of evidence to demonstrate a genuine issue of material fact and avoid summary judgment.⁶

As there are no genuine issues as to any material fact, the Court finds this case is suitable for summary disposition.

Plaintiff, an African-American, was employed by Defendant from February 1, 1999 to December 23, 2003. Throughout his employment, Plaintiff was an hourly worker and member of the Local 2-86 Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO ("the Union"). Upon commencement of his employment, plaintiff was provided with an Employee Conduct Manual ("Manual").⁷ Plaintiff signed an agreement entitled "the Conditions of Employment for Union Eligible Employees," which provided, inter alia, that abiding by all policies and regulations is a condition of employment.⁸ Plaintiff

6. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1373 (3d Cir. 1992).

7. Deposition of Fred Edwards at 78.

8. Plaintiff's Deposition at 53.

read the agreement before he signed it and understood that its terms were a condition of his employment.⁹

During his four-year period of employment with Defendant, Plaintiff was disciplined a total of fourteen times for misconduct as follows:

January 12, 2001-Verbal warning for absenteeism;

June 19, 2001-Counseling for lateness;

August 8, 2001-Verbal warning for lateness;

April 8, 2002-Counseling for sleeping on the job;

May 14, 2002-Verbal warning for poor work performance; namely, fifteen (15) progressive aseptic technique violations;

May 16, 2002-Verbal warning for lateness;

August 28, 2002-Five-day suspension for time card falsification and leaving the plant site during his work shift;

November 18, 2002-Counseled regarding the Company's lateness and absence policy;

December 13, 2002-Verbal warning for absenteeism;

9. Id. at 54.

January 28, 2003-Five-day suspension for leaving his work area and plant site prior to the end of his work shift;

April 7, 2003-Verbal warning for not filling out his time card properly.

May 2, 2003-Verbal warning for not filling out his time card properly;

June 30, 2003-Verbal warning for not reporting lateness on time card; and

September 4, 2003-Five-day suspension for failing to report to work or to call in his absence.¹⁰

During 2003, Plaintiff, through his Union, filed three grievances against the Defendant, all of which were unsuccessful.¹¹ On May 7, 2003, Plaintiff filed a charge with the EEOC, claiming he was the victim of racial discrimination by the Defendant.¹² On September 8, 2003,

10. Affidavit of Susan Orff, Senior Secretary in the Merck Manufacturing Division Human Resources and Labor Relations Department of the Merck Corporate Division, at paragraph 7.

11. See Plaintiff's Exhibits to Memorandum of Law in opposition to Defendant's Motion for Summary Judgment.

12. Id.

the EEOC issued a Dismissal and Notice of Right to Sue based on the May 7, 2003 charge.¹³

Plaintiff's supervisor, Edward Sharpe ("Sharpe"), terminated Plaintiff on December 23, 2003 for the following three offenses, each of which alone constituted a dischargeable offense in Defendant's Employee Code of Conduct: "(i) abuse of Company benefits and/ or policy, e.g. sick plan¹⁴; (ii) deliberate falsification of company records and documents, including time cards; and (iii) falsifying relevant information or testimony when the Company was investigating possible rules violations."¹⁵ In determining whether to terminate Plaintiff, Sharpe also gave consideration to Plaintiff's extensive disciplinary history and the fact that Plaintiff had been previously counseled, warned and disciplined.¹⁶

At the time Sharpe decided to terminate Plaintiff, he was not aware that Plaintiff had previously filed a

13. Id.

14. This offense arose out of Plaintiff requesting time off under the Family and Medical Leave Act, when, in fact, he was vacationing with a co-worker in Jamaica. Exhibit A to Sharpe Affidavit.

15. Sharpe Affidavit at paragraph 3; Exhibit A to Sharpe Affidavit.

16. Sharpe Affidavit at paragraph 5.

charge of discrimination with the EEOC on May 7, 2003.¹⁷ Indeed, Plaintiff himself testified at his deposition that he did not know one way or the other whether Sharpe knew that Plaintiff had filed a charge of discrimination with the EEOC.¹⁸ Plaintiff also testified that he did not think that Sharpe retaliated against him or discriminated against him in any fashion.¹⁹

Plaintiff challenged his termination through his Union. After an arbitration hearing, at which Plaintiff was represented by Union representatives and legal counsel, who both submitted documentary and testimonial evidence and cross-examined Defendants's witnesses, an impartial arbitrator issued a 27-page Opinion and Award upholding Defendant's decision to terminate Plaintiff. The arbitrator concluded that Plaintiff's "conduct did not arise from harmless, innocent or inconsequential error but instead arose from deliberate attempts on a contrary basis to mislead the Company" and that Plaintiff "is a short-term employee without the benefit of argument that he had long

17. Sharpe Affidavit at paragraph 4.

18. Deposition of Fred Edwards at 214-15.

19. Id. at 77.

service with the Company which should serve to mitigate the penalty."²⁰

Following his termination, Plaintiff filed a charge of discrimination with the EEOC on July 24, 2004, claiming he was terminated in retaliation for filing his previous May 7, 2003 charge with the EEOC. The EEOC issued a Notice of Dismissal and Notice of Right to Sue on November 4, 2004. This suit followed.

In order to prove a prima facie case of retaliation under Title VII, a Plaintiff must first prove: (1) he engaged in protected activity under Title VII; (2) he suffered an adverse employment action either after or contemporaneous with his protected activity; and (3) a causal connection exists between his protected activity and the employer's adverse action.²¹ If a Plaintiff establishes a prima facie case, the employer must produce evidence of a legitimate, nondiscriminatory reason for the adverse employment action.²² If the employer satisfies its burden,

20. Opinion and Award at 27.

21. Slagle v. County of Clarion, 435 F.3d 262, 265 (3d Cir. 2006); Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997), cert denied 118 S.Ct. 299.

22. Id. at n.2.

a Plaintiff must be able to convince the factfinder both that the employer's proffered explanation was false and that retaliation was the real reason for the adverse employment action.²³

In addition, the fact that Plaintiff's termination was upheld by an undisputedly neutral arbitrator who had the power to prevent the termination is "highly probative of the absence of discriminatory intent in that termination."²⁴ Under these circumstances, in order to survive a motion for summary judgment, Plaintiff must present strong evidence that the decision was wrong as a matter of fact or that the impartiality of the proceeding was somehow compromised.²⁵

In the case sub judice, there is no dispute that Plaintiff's filing of the charge with the EEOC on May 7, 2003 alleging race discrimination constitutes protected

23. Id.

24. Collins v. New York City Transit Authority, 305 F.3d 113, 119 (2d Cir. 2002). The Court cites this decision from the Second Circuit as it is particularly relevant to the instant matter and because it draws its conclusion from Alexander v. Gardner-Denver Co., 415 U.S. 36, 60 n.21 (1974) in which the Supreme Court determined that the amount of weight to give a particular arbitration decision is left to the court's discretion and depends on facts and circumstances of each case.

25. Id.

activity. There is also no dispute that Plaintiff's termination on December 23, 2003 constitutes an adverse employment action. Defendant, however, contends that Plaintiff is unable to show a causal connection between the charge Plaintiff filed with the EEOC on May 7, 2003 and his termination on December 23, 2003. Where, as here, a decision has already been rendered against Plaintiff by a neutral arbitrator, Plaintiff's proof of the required causal link becomes even more attenuated.²⁶

Sharpe averred that at the time he decided to terminate Plaintiff, he was not even aware that Plaintiff had previously filed a charge of discrimination with the EEOC on May 7, 2003. Indeed, Plaintiff himself testified at his deposition that he did not know one way or the other whether Sharpe knew that Plaintiff had filed a charge of discrimination with the EEOC.²⁷ Plaintiff's retaliation claim particularly crumbles in light of Plaintiff's following deposition testimony: Q. Do you believe that Mr. Sharpe retaliated

or discriminated against you in any fashion?

26. Id.

27. Deposition of Fred Edwards at 214-215.

A. No, he didn't. He didn't know me to do that. He didn't know me like that...²⁸

Plaintiff has not cited to any evidence in the record to refute the averments of Sharpe or his own testimony. Since there is no evidence in the record that shows that Sharpe knew of Plaintiff's May 7, 2003 charge with the EEOC at the time he terminated plaintiff, the Court finds, as a matter of law, that Plaintiff has failed to satisfy the third prong necessary to establish a prima facie case of retaliation.

Even if Plaintiff could prove a prima facie case of retaliation, the Court finds that Defendant has articulated a legitimate non-discriminatory reason for terminating him—that Plaintiff has committed numerous dischargeable offenses under Defendant's Employee Code of Conduct, including abuse of Company benefits and/ or policy, e.g. sick plan; deliberate falsification of company records and documents, including time cards; and falsifying relevant information or testimony when the Company was investigating possible rules violations.

28. Id. at 77.

Plaintiff argues that the fact that he committed numerous dischargeable offenses under the Employee Code of Conduct was merely a pretext for the Defendant's decision to terminate Plaintiff and that the real reason was in retaliation for Plaintiff filing a Charge of discrimination with the EEOC.

Specifically, Plaintiff claims that several employees who were accused of substantially the same misconduct as Plaintiff were reinstated to their jobs or allowed to take early retirement whereas Plaintiff was not offered to be reinstated or allowed to take early retirement.

The record reveals, however, that the four employees Plaintiff refers to--Jonathan Crosby, Chris Johnson, Grey Meyers and Richard Neff--were all terminated for only committing one offense: falsifying their time cards. Plaintiff on the other hand, was terminated for committing three offenses.²⁹

In addition, none of these individuals had anywhere near Plaintiff's extensive disciplinary history. Specifically, in the three years prior, Neff was not

29. Orff Affidavit at paragraph 5.

disciplined in any fashion and Crosby was disciplined on one occasion for violating a safety policy.³⁰ Johnson received a verbal warning followed by a written warning for lateness and a verbal warning for violating a safety policy.³¹ Meyer received a one-day suspension for violating a safety policy and two verbal warnings for a late arrival at his work area and absenteeism.³² As noted previously, during the same time period, Plaintiff was disciplined on more than fourteen separate occasions.³³

All four employees were similarly allowed to return to work under a last chance agreement or to retire after it was discovered through the grievance process that a supervisor had condoned their time card falsification. All four employees were required to repay Defendant for overpayment of wages.³⁴

Finally, Crosby, like Plaintiff, was allowed to return even though he had previously filed a grievance in

30. Orff Affidavit at paragraph 7.

31. Id.

32. Id.

33. Id.

34. Id. at paragraph 8.

January 2001 for discrimination and harassment.³⁵ It is thus obvious that Plaintiff was not similarly situated with these four employees, and, in fact, Plaintiff's history of misconduct was much more egregious than that of the other four employees.

In sum, there is no evidence in the record from which a jury could conclude that Plaintiff has proven even a prima facie case of discrimination against the Defendant. Even if a jury could conclude that Plaintiff had established a prima facie case, there is absolutely no evidence from which a jury could conclude that Defendant's legitimate non-discriminatory reason for terminating Plaintiff was false and that retaliation was the real reason for terminating Plaintiff. In addition, Plaintiff has not shown that the impartial arbitrator's decision was wrong as a matter of fact or that the impartiality of the arbitration proceeding was somehow compromised. Accordingly, summary judgment will be entered in favor of the Defendant and against the Plaintiff.

An appropriate Order follows.

35. Id. at paragraph 9.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRED L. EDWARDS

V.

C.A. NO. 05-373

MERCK & CO., INC.

ORDER

AND NOW, this 18th day of April, 2006, upon consideration of Defendant's motion for summary judgment and all responses thereto, it is hereby ORDERED that Defendant's motion for summary judgment [Doc. #11] is GRANTED.

Judgment is ENTERED in favor of the Defendant and against the Plaintiff.

The Clerk is DIRECTED to mark this case CLOSED.

IT IS SO ORDERED.

BY THE COURT:

CYNTHIA M. RUFÉ, J.